

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

OCT -5 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

KELVIN M. BEATTY and LESLIE)	2 CA-CV 2011-0116
BEATTY, husband and wife, on their own)	DEPARTMENT A
behalf and on behalf of their minor)	
children, BRYCE S. BEATTY and)	<u>MEMORANDUM DECISION</u>
BRAYDON J. BEATTY,)	Not for Publication
)	Rule 28, Rules of Civil
Plaintiffs/Appellees,)	Appellate Procedure
)	
v.)	
)	
ORO VALLEY HOSPITAL, L.L.C., a)	
foreign corporation,)	
)	
Defendant/Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20096246

Honorable Kenneth Lee, Judge

APPEAL DISMISSED

Law Office of Scott E. Boehm
By Scott E. Boehm

Phoenix

and

Plattner Verderame, P.C.
By Frank Verderame

Phoenix

and

Kinerk Schmidt & Sethi, P.L.L.C.
By James H. Dyer and Dev K. Sethi

Tucson
Attorneys for Plaintiffs/Appellees

Law Office of Michael Meehan
By Michael J. Meehan

Tucson

and

Portnoy & Roth
By Robert P. Roth

Bloomfield Hills, Michigan

and

Campbell, Yost, Clare & Norell, P.C.
By Kari B. Zangerle

Phoenix
Attorneys for Defendant/Appellant

H O W A R D, Chief Judge.

¶1 Appellant Oro Valley Hospital appeals from the jury's verdict holding it liable for an injury to Kelvin Beatty. Appellees Kelvin and Leslie Beatty argue this court lacks jurisdiction on appeal because the trial court's ruling was not an appealable interlocutory judgment under A.R.S. § 12-2101(A)(6).¹ We agree and therefore dismiss the appeal.

Factual and Procedural Background

¶2 The underlying facts are undisputed. The Beattys sued Oro Valley Hospital for medical malpractice allegedly causing Beatty's injury. After the first part of a bifurcated trial, the jury found Oro Valley Hospital liable. The Beattys lodged a proposed form of partial judgment which the trial court signed. Oro Valley Hospital filed a notice of appeal from that judgment and a subsequent motion for a new trial.

¹Although both parties rely on § 12-2101(G), we note the statute has been renumbered with minor grammatical changes. 2011 Ariz. Sess. Laws, ch. 304, § 1.

¶3 On appeal, the Beattys filed a motion to dismiss for lack of jurisdiction. This court denied that motion, and both parties filed briefs on the merits of the appeal.

Discussion

¶4 In their opening brief, appellees again contend this court lacks jurisdiction over the appeal, arguing that the trial court's ruling was not a final determination of rights and, thus, was not an appealable interlocutory judgment under A.R.S. § 12-2101(A)(6). We have an independent duty to determine whether we have jurisdiction. *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465, 957 P.2d 1007, 1008 (App. 1997). Our jurisdiction is prescribed by statute, and we have no authority to entertain an appeal over which we do not have jurisdiction. *Hall Family Props., Ltd. v. Gosnell Dev. Corp.*, 185 Ariz. 382, 386, 916 P.2d 1098, 1102 (App. 1995).

¶5 Section 12-2101(A)(6) permits an appeal “[f]rom an interlocutory judgment that determines the rights of the parties and directs an accounting or other proceeding to determine the amount of the recovery.” In *Bilke v. State*, 206 Ariz. 462, ¶ 28, 80 P.3d 269, 275 (2003), the Arizona Supreme Court determined that an appeal may be taken under that statute if the trial court “expressly directs” that only the amount of recovery remains at issue. The court also approved of a previous case requiring a trial court “use express language that the judgment has finally determined the rights of the parties and is subject to an interlocutory appeal.” *Bilke*, 206 Ariz. 462, ¶¶ 23, 27, 80 P.3d at 274-75, *relying on Cook v. Cook*, 26 Ariz. App. 163, 547 P.2d 15 (1976). And it reaffirmed that an appeal from an interlocutory judgment depends “on the finality of the liability decision

and the trial court's discretionary finding that an appeal should lie in the particular case.”
Bilke, 206 Ariz. 462, ¶ 23, 80 P.3d at 274.

¶6 Here, the trial court's ruling stated that the Beattys had been awarded judgment on liability, but that the damages had not been resolved. The ruling further explained that the “judgment remain[ed] subject to revision at any time before the entry of judgment adjudicating all of the claims and rights and liabilities of all of the parties.” It concluded, “This is not a final judgment except as to jury fees.”

¶7 Although the trial court ruled that the Beattys had been awarded judgment on liability and that the damages were still pending, the court did not determine that the judgment was appealable. Instead, the court expressly stated that the judgment remained subject to revision and was not final. Thus, the ruling was not an appealable interlocutory judgment under § 12-2101(A)(6). *See Bilke*, 206 Ariz. 462, ¶¶ 23, 27, 80 P.3d at 274-75.

¶8 Oro Valley Hospital argues that the first provision in the judgment satisfies *Bilke*'s requirements for an appealable interlocutory order. However, Oro Valley Hospital provides no authority for the proposition that the remainder of the judgment should be ignored. Instead, “[t]he intention of the court must be determined from all parts of the judgment and words and clauses should be construed according to their natural and legal import.” *See Lopez v. Lopez*, 125 Ariz. 309, 310, 609 P.2d 579, 580 (App. 1980). Therefore, we decline to interpret the trial court's intention to be the opposite of what it expressly set forth.

¶9 Oro Valley Hospital further requests we exercise special action jurisdiction, arguing the appeal is one of statewide importance because it would require this court to resolve the standard of care in medical malpractice cases and articulate procedures to be used when jurors err in deliberation. It also contends that special action jurisdiction is appropriate because the parties have already prepared and briefed the case.

¶10 We have jurisdiction to consider petitions for special actions under A.R.S. § 12-120.21(A)(4). But, the acceptance of jurisdiction in a special action is highly discretionary. *Perry v. Ronan*, 225 Ariz. 49, ¶ 5, 234 P.3d 617, 619 (App. 2010). Special action jurisdiction should be granted if “there is no equally plain, speedy, and adequate remedy by appeal.” *Id.*, quoting Ariz. R. P. Spec. Act. 8(a). And we are more likely to consider a special action if it is “one of first impression, is a purely legal issue, and is of statewide significance.” *Levinson v. Jarrett*, 207 Ariz. 472, ¶ 4, 88 P.3d 186, 188 (App. 2004). A case is one of statewide importance if it affects numerous other cases. *Haag v. Steinle*, 227 Ariz. 212, ¶ 4, 255 P.3d 1016, 1018 (App. 2011). And “[s]pecial actions may not be used as a substitute for an appeal.” *Jordan v. Rea*, 221 Ariz. 581, ¶ 8, 212 P.3d 919, 924 (App. 2009).

¶11 Oro Valley Hospital does not argue that it would lack an equally plain, speedy and adequate remedy by appeal after the trial court issues a final judgment in the case. And in its opening brief, Oro Valley Hospital states that admitting the hospital policy as evidence of the standard of care without expert testimony “violated . . . clear law.” Oro Valley Hospital also argues that when jury misconduct occurs “Arizona law has long recognized a party’s right to a new trial.” Thus, even though Oro Valley

Hospital characterizes these issues as ones of statewide importance in its request for special action jurisdiction, it concedes them to be application of clearly established law in its argument. And although Oro Valley Hospital argues that all the issues from the liability trial have been briefed properly, the trial court clearly stated that the judgment was not final and could be revised at any time, potentially changing or adding issues for appeal. Moreover, “efficient use of resources” alone generally is insufficient to justify special action jurisdiction. *See State Comp. Fund of Ariz. v. Fink*, 224 Ariz. 611, n.1, 233 P.3d 1190, 1192 n.1 (App. 2010). Therefore, we decline to accept jurisdiction of this matter as a special action. *See Perry*, 225 Ariz. 49, ¶ 5, 234 P.3d at 619.

Conclusion

¶12 For the foregoing reasons, we dismiss this appeal for lack of jurisdiction.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge